

**United States Department of Labor
Employees' Compensation Appeals Board**

R.V., Appellant

and

**U.S. POSTAL SERVICE, FIVE POINTS
STATION, Akron, OH, Employer**

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**Docket No. 16-0099
Issued: March 2, 2016**

Appearances:

Alan J. Shapiro, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 20, 2015 appellant, through counsel, filed a timely appeal from an August 6, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days have elapsed from the last merit decision of May 30, 2014 to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP properly refused to reopen appellant's case for further review on the merits pursuant to 5 U.S.C. § 8128(a).

On appeal appellant's counsel contended that OWCP's decision was contrary to fact and law.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On May 13, 2013 appellant, then a 41-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she suffered a torn meniscus of the left knee in the course of her federal employment. She noted that, upon returning from her route on February 28, 2013, she started having extreme pain in her left knee. Appellant stopped work on May 3, 2013.

In support of her claim, appellant submitted results from a magnetic resonance imaging scan conducted on April 12, 2013 that was interpreted as showing a complex tear of the anterior horn lateral meniscus with an associated intrameniscal cyst and full-thickness chondral central trochlea. She received medical treatment from April 23 through June 18, 2013 from Dr. Michael LoPresti, a Board-certified orthopedic surgeon, who diagnosed appellant with torn left meniscus and arthralgia of the left knee. He performed an arthroscopy of the left knee and partial lateral meniscectomy on May 3, 2013.

By decision dated September 11, 2013, OWCP denied appellant's claim, finding that she failed to establish that her accepted factors of federal employment caused her accepted left knee internal derangement and lateral meniscus tear.

On September 16, 2013 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative. At the hearing held on March 11, 2014, she discussed her work history, her issues with her left knee, and her medical treatment.

By decision dated May 30, 2014, the hearing representative affirmed the September 11, 2013 decision.

On May 22, 2015 appellant, through counsel, requested reconsideration. In support thereof, counsel submitted reports from Suburban Physical Therapy from May 10 through 17, 2013. In these reports, Michael Janesch, appellant's treating physical therapist, noted that appellant had surgery on May 3, 2013 for a left knee lateral meniscus tear, and he discussed his physical therapy treatment of appellant.

By decision dated August 6, 2015, OWCP denied appellant's request for reconsideration without conducting a merit review.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,² OWCP's regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.³ To be entitled to a merit review

² *Supra* note 1. Under section 8128 of FECA, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.606(b)(3).

of an OWCP decision denying or terminating a benefit, a claimant's application for review must also be received within one year of the date of that decision.⁴ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.⁵

ANALYSIS

OWCP found that appellant had established that she experienced the working conditions as alleged and that appellant sustained internal derangement of the left knee with a torn lateral meniscus. However, it denied appellant's claim because she had not submitted medical evidence establishing a causal relationship between the accepted medical conditions and the accepted factors of her federal employment.

The last merit decision in this case was the hearing representative's decision of May 30, 2014 affirming the September 11, 2013 decision denying appellant's claim for failure to establish a causal relationship between her accepted employment factors and her accepted torn meniscus. The Board is restricted to reviewing OWCP decisions issued within 180 days of appellant's October 20, 2015 date of filing of this appeal and, therefore, the Board does not have jurisdiction over the merits of this case. Accordingly, the Board is limited to reviewing the nonmerit decision denying reconsideration issued on August 6, 2015. The Board will only address whether appellant's request for reconsideration was properly denied without merit review.⁶

As previously noted, OWCP determined that appellant experienced the employment factors as alleged and that she suffered from a torn meniscus, but denied appellant's claim as she failed to submit rationalized medical evidence establishing a causal connection between her torn meniscus and her accepted employment factors. Causal relationship is a medical issue and must be established by rationalized medical evidence. Appellant's claim was denied as she had not submitted any medical evidence establishing a causal relationship.

In support of appellant's reconsideration request, counsel submitted notes from her physical therapist. Reports of physical therapists however have no probative value regarding the medical issue of causal relationship as physical therapists are not considered physicians as defined by FECA.⁷ Therefore, the reports of appellant's physical therapist do not constitute relevant and pertinent medical evidence.⁸

⁴ *Id.* at § 10.607(a).

⁵ *Id.* at § 10.608(b).

⁶ *Id.* at § 501.3(e).

⁷ The term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8102(2); *J.G.*, Docket No. 15-251 (issued April 13, 2015); *A.C.*, Docket No. 08-1453 (issued November 18, 2008) (records from physical therapists do not constitute competent medical opinion in support of causal relation, as physical therapists are not physicians as defined under FECA).

⁸ *A.L.*, Docket No. 15-1418 (issued October 8, 2015).

The Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law, has not advanced a relevant legal argument not previously considered by OWCP, and has not constituted relevant and pertinent new evidence not previously considered by OWCP. Accordingly, the Board finds that she did not meet any of the necessary requirements and is not entitled to further merit review.⁹

CONCLUSION

The Board finds that OWCP properly refused to reopen appellant's case for further review on the merits pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 6, 2015 is affirmed.

Issued: March 2, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

⁹ See *L.H.*, 59 ECAB 253 (2007).